

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FORREST STOBBE,

Plaintiff,

v.,

DR. GILL, in her official capacity; R.
FISHER, Warden; VALLEY STATE
PRISON; CALIFORNIA DEPARTMENT
OF CORRECTIONS; STATE OF
CALIFORNIA,

Defendant.

Case No. 1:20-cv-00656-HBK (PC)

ORDER DENYING PLAINTIFF’S MOTION

(Doc. No. 7)

Pending before the court is plaintiff’s pleading titled “Petition Pursuant to Government Code § 946.6 relieving § 945.4 (Claim Preservation)” filed February 16, 2021. (Doc. No. 7). Liberally construed, it appears plaintiff pre-emptively files this pleading as a motion to obtain relief for his failure to timely comply with the government tort claims process in California. (*Id.* at 1-4). Attached to the plaintiff’s motion are copies of medical grievances and letters. (*Id.* at 5-10). Plaintiff, a prisoner, and is proceeding *pro se* on his amended complaint filed under 42 U.S.C. § 1983 alleging violations of the Eighth Amendment for medical deliberate indifference,

1 the Americans with Disabilities Act, the Rehabilitation Act, and a state law negligence and/or
2 medical malpractice claim. (Doc. No. 5). Plaintiff paid the filing fee to proceed in this action.
3 (Receipt No. CAE100045610).

4 Plaintiff's motion sets forth his understanding regarding the exhaustion of administrative
5 remedies requirement under the Prison Litigation Reform Act (PLRA) and California law related
6 to pendent state law tort claims. (Doc. No. 7). Plaintiff acknowledges that the PLRA requires he
7 exhaust his administrative remedies before initiating a lawsuit and states that, while he diligently
8 pursued his administrative remedies under the PLRA, his governmental tort law claim was
9 rejected as untimely. (*Id.* at 1-3). Plaintiff asks the court to excuse his delay in timely complying
10 with the state government claims process because he was availing himself of the administrative
11 process required by the PLRA and made an "honest mistake." (*Id.* at 3).

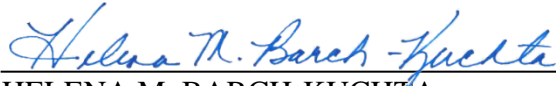
12 Considering the procedural posture of this case, including the plaintiff's amended
13 complaint has not yet been screened, the court finds plaintiff's pre-emptive opposition to either an
14 exhaustion-based summary judgment motion or motion to dismiss to be premature. To
15 adequately state a tort claim for damages, plaintiff bears the burden of alleging compliance with
16 the requirements of California's government tort claims process. *See Karim-Panahi v. Los*
17 *Angeles Police Department*, 839 F.2d 621 (9th Cir. 1988) (noting that a plaintiff failure to comply
18 with claim-filing requirements under California Tort Claims act bars pendent state claims).
19 Should this case proceed past the second § 1915A screening, plaintiff may raise any arguments
20 asserted herein to oppose a motion to dismiss or for summary judgment concerning his timely
21 compliance with California's government tort claims process.

22 Accordingly, it is ORDERED:

23 Plaintiff's pleading (Doc. No. 7), construed as a pre-emptive opposition to an exhaustion-
24 based summary judgment motion or motion to dismiss, is DENIED without prejudice as
25 premature.
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2 IT IS SO ORDERED.

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4 Dated: April 23, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE